

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

DUSTIN BURNIKEL,

Plaintiff,

v.

MICHAEL FONG, individually and in his
official capacity as a law enforcement officer
with the Des Moines Police Department;
GREG WESSELS, , individually and in his
official capacity as a law enforcement officer
with the Des Moines Police Department; and
CITY OF DES MOINES, IOWA,

Defendants.

4:15-cv-00050-RGE-HCA

**ORDER RE:
PLAINTIFF'S MOTION
TO EXCLUDE
EXPERT TESTIMONY**

Now before the Court is Plaintiff's motion to exclude expert testimony pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). ECF No. 118. This matter was addressed at the final pretrial conference on October 29, 2018.

Plaintiff moves to exclude portions, designated as "Opinions," of an expert report written by Defendants' expert, Dr. John G. Peters. *Id.* at 1. Plaintiff argues Opinions 1 through 6 and 11 should be excluded during the first phase of the trial. *Id.* at 2. Plaintiff argues Opinions 7 through 10 should be excluded from both phases of the trial. *Id.* at 3–5.

At the final pretrial conference, the parties agreed Opinions 1 through 6 and 11 will be excluded from the first phase of the trial and will be available for consideration during the second phase of the trial.

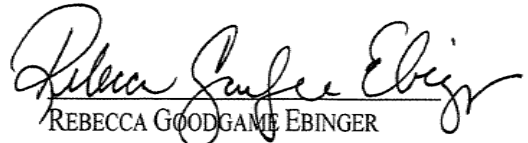
For the reasons discussed and the final pretrial conference, the Court finds Opinions 7, 8, and 9 are admissible as long as testimony is elicited in the proper form.

At the final pretrial conference, Plaintiff stated he has abandoned his failure to train claim. Accordingly, Opinion 10 is no longer relevant and will be excluded.

For the foregoing reasons, Plaintiff's Motion to Exclude Expert Testimony, ECF No. 118, is **GRANTED** in part and **DENIED** in part.

IT IS SO ORDERED.

Dated this 2nd day of November, 2018.



REBECCA GOODGAME EBINGER
UNITED STATES DISTRICT JUDGE